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CURRENT TOPICS

Lawyers in Parliament

THERE are twenty solicitors in the new House of Commons, all of them familiar figures in previous Parliaments. Mr. ERIC FLETCHER, son of a former town clerk of Islington, Major W. HICKS BEACH, great nephew of a former Chancellor of the Exchequer, Mr. DONALD KABERRY, Parliamentary Secretary to the Board of Trade and a member of the Council of The Law Society, Mr. SIDNEY SILVERMAN, Mr. CLEDWYN HUGHES, formerly town clerk of Holyhead, Mr. FRANK BOWLES (Deputy Chairman of Ways and Means 1948–1950), Mr. RAYMOND GOWER, Parliamentary Private Secretary, Ministry of Transport, Mr. GRANVILLE WEST (Parliamentary Private Secretary to the Home Secretary 1950–1951) all bear names which are familiar to the public as well as to the profession. Other well known solicitors in Parliament are Mr. HOWARD JOHNSON, Mr. R. GRAHAM PAGE, Mr. DONALD WADE (member of the Select Committee on Estimates 1951–1954) Mr. BARNETT JANNER, Mr. LESLIE LEVER (member of Manchester City Council since 1932, and an alderman since 1951), Mr. LESLIE HALE (member of Leicestershire County Council 1925 to 1949), Mr. GEOFFREY WILSON, Mr. RUPERT SPEIR, Mr. RONALD W. WILLIAMS, Sir FRANK MEDLICOTT, Mr. LANCELOT JOYNSON-HICKS (Parliamentary Secretary, Ministry of Fuel and Power 1951–1955) and Mr. JOHN HAY (Parliamentary Private Secretary to the Board of Trade 1951–1955). We extend our congratulations to all these, as well as to the many barristers who secured election, and in many cases re-election.

Strike Lifts

WE wish all solicitors a blissful freedom from knotty points arising out of the fresh complications engendered in motor car insurance law by the railway strike. We are told that all insurers have agreed that any use of private cars for the emergency, other than use for hire, will be allowed under their policies until further notice. The exception, it will be noted, is restricted to use for "hire," a term distinguished by the Court of Appeal from "reward" (*Bonham* v. *Zurich General Accident Insurance Co.* [1945] K.B. 292). So a policy will not be invalidated because a motorist accepts from a neighbour something towards the petrol, provided there is no obligation to pay. But what of a case where an employer agrees to make an allowance, or an extra allowance, for the use by the employee of his car on condition that he brings a fellow-employee to work? That is reward. It could also be construed as an implied contract for payment. No doubt it will be necessary, too, to explain to clients that, while the insurers' dispensation preserves the policy from avoidance though passengers are carried, it does not in itself extend the cover so as to provide indemnity from claims by those passengers. Hence the relevance of the Government announcement of their emergency indemnity scheme, and the need for motorists to comply with its condition by exhibiting and publicising the risk notice unless their policies are more than usually comprehensive.

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Entry of Appearance: Emergency Extension of Time

To meet difficulties caused by the railway strike, it is announced by the Lord Chancellor's Office, the R.S.C. (No. 1), 1955 (S.I. 1955 No. 792 (L.4)), which came into operation on 1st June, extends the time for entering an appearance from seven to fourteen days where a defendant resides or carries on business more than three miles from the Royal Courts of Justice or a district registry.

Meaning of "Reasonable Doubt"

CRIMINAL lawyers who have followed the trend of leading decisions of recent years on the onus of proof resting on the prosecution's shoulders will not have been greatly surprised at the decision by a full Court of Criminal Appeal in *R.* v. *Murtagh* (*The Times*, 25th May). Reasons are to be given at a later date, but the trend of the argument in court indicated that the direction to the jury that they were to be satisfied of the guilt of the accused was insufficient, and that for that reason the court allowed the appeal. The appellant's criticisms were that the word "satisfied" did not go far enough, and the word "sure," as in *R.* v. *Summers* (1952), 36 Cr. App. Rep. 14, was not used. Nor were the words "doubt" or "reasonable doubt" used. LORD GODDARD had criticised the use of the phrase "reasonable doubt" in *R.* v. *Summers*, with the words which usually followed it, explaining its meaning to the jury, and had suggested the use of the word "satisfied." We hesitate to anticipate the reasons which the court will give, but it does seem that the effect of the decision is to reaffirm *Woolmington's* case [1935] A.C. 462 and *Mancini's* case [1942] A.C. 1 as the leading authorities, in so far as they were ever impaired. It also to some extent reaffirms confidence in the jury system in so far as it was affected by the suggestion that juries would be confused by the idea of "reasonable doubt."

Quarantine

A RECENTLY reported prosecution has drawn sharp attention to the fact that there is more in the law relating to domestic animals than the well known distinction depending on the owner's knowledge or ignorance of any ferocious propensity in his pet. Most civilised States have enacted laws to guard against the danger to the human population which would spring from an unchecked prevalence of disease in the animal kingdom, and in this country the department charged by Parliament with the execution of these measures is that of the Ministry of Agriculture and Fisheries. Restrictions on the importation of animals constitute only one of the means by which the Minister is empowered to achieve the objects of the Diseases of Animals Act, 1950. Still operative by virtue of s. 89 (2) of that Act is the Importation of Dogs and Cats Order, 1928, made under earlier statutes for the purpose of prohibiting, except under licence of the Minister previously obtained, the landing from abroad of members of the canine and feline tribes, wild or domesticated, hyenas being reckoned as canines. So far as the domestic dog and cat are concerned, unless they are shown to the satisfaction of the Minister to be performing animals or unless they are to be re-exported within forty-eight hours, there appears to be no escape from reg. 2, which dooms them to be isolated for six months at the expense of their owners in premises controlled by a veterinary surgeon—"the place of detention" is the sinister phrase used in the order. So long as facilities for vaccination of dogs against rabies are not available in the United Kingdom, the justification for this harsh sentence is not difficult to explain to the most ardent dog-lover. Its application to cats is less publicised. We read that the Cardiff magistrates have recently had occasion to fine a member of the merchant marine for landing and taking home two Siamese cats in defiance of the regulations.

National Insurance and the Self-Employed

AN outspoken comment on the operation of national insurance was made by His Honour Judge HODGSON at Wandsworth County Court on 23rd May, 1955. He said: "I do not want to say anything too strong, but I think certain aspects of national insurance are a swindle, particularly with regard to a self-employed person. They have raised the contributions of a self-employed person, but a self-employed person cannot get any national insurance for being out of work, but has to pay contributions for others to get it." He added that "counsel has to pay contributions as a self-employed person and still has to go on paying when briefs are slow in coming. A self-employed person has to pay other people's contributions." "They do get a pension—if they live long enough," was his final observation. We believe this to be fair comment, and justified in fact. Self-employed persons, including solicitors, have to pay handsomely to an insurance scheme which provides them with little in return. At the same time they must make provision for the vicissitudes of their own lives and the lives of their dependants. The provision for them in the national insurance scheme bears no relation to their contributions or their needs. Some more thinking on these lines, especially on the part of representative professional bodies, seems to be called for.

The Whole Truth

A DEFENDANT to a charge of careless driving raised a difficult problem for a Yorkshire bench on 16th May, when he gratuitously added to the words "the truth, the whole truth and nothing but the truth," the phrase "as I see it." "Never mind the truth as you see it," warned the clerk. "It may be different from other people's ideas." Of course, the defendant was wrong in law in attempting to alter the oath, and the magistrates' clerk, in his proper anxiety to get on with the case, also slipped in asking the witness not to mind the truth as he saw it, for that was all that he was entitled to mind. The clerk no doubt intended to warn the witness to read only the words on the card, whether he thought they were appropriate or not. It is worth considering whether, after all, the oath is one which can be honestly taken by intelligent witnesses. Which is more rational—to ask a witness to tell the truth as he sees it, or to ask him to attempt the impossible task of telling the whole truth?

Fire Protection for Office Buildings

WE are glad to inform readers that they may obtain free from the Fire Protection Association, of 15 Queen Street, London, E.C.4, a booklet of notes on fire protection of offices, which contains much valuable advice as to the prevention of fires and the action to take when outbreaks occur. Advice is also given on fire protection equipment. By way of warning the booklet contains a photograph of devastation in a London office caused by the sun shining on celluloid components of a filing system. The Fire Protection Association is continuously engaged in the preparation of technical information and in giving advice on all subjects relating to fire protection. As the work on any subject is completed it is published either in the Association's quarterly journal or as a separate booklet. Copies of the Association's technical publications and of each issue of the journal are sent to associate members immediately they are published. Posters are sent on request. The Fire Protection Association is always ready to answer inquiries or provide information free of charge. Anyone may become an associate member, the annual subscription being £1 1s.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE

THE right of the public to enjoy the beauties of the countryside, although of great importance, has unfortunately often been the subject of dispute and controversy. In England and Wales the enclosure of open country continued steadily for some centuries. It must be admitted that much of this enclosure was of great benefit to English agriculture, and there was relatively little opposition to the majority of the Enclosure Acts, numbering nearly 5,000, which were passed in the seventeenth, eighteenth and nineteenth centuries.

In the middle of the nineteenth century, however, there was the beginning of a new public mood. Towns were growing, and in the middle of that century the population was approximately equally divided between the urban and the rural. With this growth of towns the desire of urban inhabitants to have easier access to open country increased. A movement was started to prevent further enclosures of common land. The General Enclosure Act of 1845 brought to an end private Enclosure Acts, but it did not have the effect of stopping enclosure. Later the Commons Preservation Society was formed to resist attempts at enclosure, and another society, namely, the National Footpaths Preservation Society, was formed to fight battles for the public on the subject of rights of way. In 1899 these two societies were amalgamated. One of the achievements of the new society was to secure the passing of the Rights of Way Act, 1932, which provides that twenty (or in some cases forty) years' uninterrupted enjoyment by the public of a right of way should, in future, constitute evidence of the legal dedication of that right of way.

Although considerable success was achieved by those who resisted attempts to make further encroachments on the existing rights of the public to walk on commons and footpaths, there were still many difficulties to be overcome. The pastimes of shooting and stalking were developed so that grouse moors and deer forests came to command a high market value. Some owners of these properties were not exactly accommodating, and many paths were closed which had once been open to the public. The question of the preservation of the countryside for the benefit of the community continued to exercise people's minds. Something was achieved by the Town and Country Planning Acts of 1925 and 1932. In 1926 a Council for the Preservation of Rural England was formed, and two years later a similar body was established for Wales. It was, however, like the other societies we have mentioned, a voluntary organisation which possessed no compulsory powers. It could only call attention by education and publicity to the dangers threatening the countryside and bring its influence to bear when particular issues were in question.

The next important statute was the Access to Mountains Act, 1939. This Act was well-intentioned but proved unsatisfactory. It provided that orders for access to areas of uncultivated land could be made by the Ministry of Agriculture. But the expenses incurred in applying for an order, including the publication of a map and the possible holding of an inquiry, had to be borne by the applicant, in spite of the fact that he was applying for something of public and not of private benefit. There was no provision for compensating landowners. Furthermore, a number of statutory offences were created when certain things were done on land. The Act varied the common law of trespass by making it, in some circumstances, a criminal offence to be on access land.

Public opinion remained dissatisfied, and eventually in 1947 a committee, presided over by Sir Arthur Hobhouse, presented a report which became a classic and was the basis of the important legislation which followed. The committee pointed out that the problem in England and Wales was fundamentally different from what it was in America and Africa, where national parks for the most part consist of vast expanses of virgin land. The idea of sterilising large areas of the English and Welsh countryside was dismissed, but the committee recommended that the "aesthetic and educational values" of areas of beautiful country should be recognised by statute. The detailed recommendations of the committee included the creation of twelve national parks, namely, in the Lake District, the Peak District, Dartmoor, the Yorkshire Dales, the Pembrokeshire Coast, the South Downs, the Roman Wall, the North Yorkshire Moors, the Brecon Beacons and the Black Mountains, and the Broads.

And so we come to the National Parks and Access to the Countryside Act, 1949. This Act has been described as the charter bestowing the freedom of the countryside on the town-dweller. It consists of 115 sections and two schedules. Space does not permit of an exhaustive examination of this statute, but its general structure and some of its important provisions may be noted. The Act is divided into six parts. The first is concerned with the establishment of a National Parks Commission; the second with the setting up of national parks; the third with nature conservation; the fourth with public rights of way; the fifth with access to open country; and the sixth part contains general, financial and supplementary provisions.

The National Parks Commission have a wide range of important duties. These are prescribed by the 1949 Act. The primary function of the Commission is to consider from time to time the "designation" of national parks, and to proceed with their designation at such times as they may determine. In considering what areas should be designated the Commission have to take into account: (i) the natural beauties of those areas, which are required to be "extensive areas"; (ii) the opportunities they afford for open air recreation, having regard both to their character and their position in relation to centres of population. Therefore the first consideration is that the park should be an extensive tract of country. This is a matter of statistics. The second criterion is natural beauty. This is a matter of taste. Then again, the natural beauty of the parks is to be preserved and enhanced. In some the threat to natural beauty has been more direct and imminent than in others. But the fact that an area has been well cared for in the past and may not at the moment be threatened with disfigurement in any way is not a reason why it should not be designated a national park. Thirdly, there is the question of opportunity for open air recreation and the position of the areas in relation to centres of population.

Distinct from designating areas as national parks, the 1949 Act (s. 87) provides that the Commission may designate areas, not being national parks, as areas of outstanding natural beauty. The actual procedure laid down by the 1949 Act is for the Commission to make a "designation order" in respect of the area in question (s. 5), and then the order requires to be confirmed by the Minister, who must hold a local inquiry to hear any objections to the order or appoint a person for the purpose to hear the objections (Sched. I, Pt. 1).

There is no complete or exclusive list of grounds upon which a designation order may be opposed. But the following are examples of some of the objections which may be raised—

and in fact have been raised—to the making of designation orders in different parts of the country :—

(1) That the land in question is purely agricultural land ; that it is largely enclosed and intensively farmed ; and that a tuberculosis eradication scheme is in operation. The objectors feared increased risk of loss and damage through trespass, ignorance and carelessness if the order should be confirmed.

(2) That there is an unenclosed water gathering ground which the objectors (who were the district council in this particular case) feared might become liable to contamination if, as a result of designation, more visitors were to be expected in the area.

(3) That designation of the area as a national park is unnecessary, and would complicate local administration and increase its cost. Further, that the future of the area is safeguarded by the development plan under the Town and Country Planning Act, 1947.

(4) That there is no threat to the amenities as a substantial part of the area is already owned by the National Trust.

The above objections may be open to the following answers:—

(1) So far as damage by trespass is concerned, experience has shown that there has not been any increase of trespass in the national parks which have already been designated under the 1949 Act.

(2) As to doing damage to unenclosed water gathering grounds, it has been found in practice that generally public access to gathering grounds does not result in damage to them.

(3) and (4) The development plans under the Town and Country Planning Act, 1947, and the duties and responsibilities of the National Trust are all parallel to the functions of the National Parks Commission under the 1949 Act. Therefore the fact that the area sought to be designated as a national park is covered by a development plan or has been substantially acquired by the National Trust are certainly matters for consideration, but do not in any way oust the jurisdiction of the National Parks Commission nor provide a conclusive reason why the land should not be designated under the 1949 Act.

Up to date, the Commission have designated eight national parks, as follows :—

The Lake District (866 square miles).
The Peak District (542 square miles).
Dartmoor (365 square miles).
The Pembrokeshire Coast (225 square miles).
The North York Moors (553 square miles).
Snowdonia (837 square miles).
Exmoor (265 square miles).
The Yorkshire Dales (680 square miles).

The national parks have special planning arrangements. For example, the Lakes and Peak are run by joint planning boards. Dartmoor, the Pembrokeshire Coast and the North York Moors (all single-county parks) are run by special park planning committees of the county council in each case. Snowdonia has a special park planning committee on each of its three constituent county councils, dealing with that part of the county which lies in the park, together with a joint advisory committee for the park as a whole.

The broad duty of a park planning authority is to keep the area of the park lovely and see that people have the opportunity to enjoy it. In the course of their normal work, the authority deal with everyday planning applications for development (dwelling-houses, garages, Nissen huts, bungalows, sewage disposal works, caravans, cow houses and dairies, advertisement signs, reservoirs, cottages, electricity supply, and so on), but in dealing with such applications the planning authority lay emphasis upon the necessity for maintaining the "amenities" of the park. Planning permissions may be granted unconditionally or subject to conditions, or they may be refused. As an example of the imposition of conditions on the grant of planning permission one may cite the application of the British Broadcasting Corporation to construct a building to house television and sound transmitters, and a 750 feet high lattice steel-stayed mast, on land at North Hessory Tor, in the Dartmoor National Park. After holding a public inquiry to hear objections, the Minister—to whom the application had been referred in the first instance—granted permission for the proposed development subject to certain conditions relating to details of siting of the mast and the siting and design and materials to be used in the construction of the building, a requirement that the approach to the station should not be fenced from the moor, and that all cables serving the station should be placed underground.

The park planning authorities, in common with planning authorities elsewhere, are required to make an access survey, in which they review what land is in their area which comes within the description "open country," that is to say, "mountain, moor, heath, down, cliff or foreshore," and the park planning authorities are then required to consider what action, if any, should be taken for securing access by the public to open country, by means of agreements with owners, or of orders made in default of agreement. So far as access to open country in national parks is concerned, it should be clearly understood that the designation of an area as a national park effects no change in the ownership of the land ; the land is not "nationalised." Moreover, the designation as a national park confers on the public no right of access. The "access" provisions in the National Parks and Access to the Countryside Act, 1949, apply throughout the whole country—there are no special access provisions relating to parks. Any additional access to open country—whether inside or outside parks—which the planning authorities may decide is required has to be provided by agreement negotiated by the authority with the owner, or by the authority's order, and orders are open to objection, in which event the Minister of Housing and Local Government must hear any objections before he confirms the orders or modifies them or declines to confirm them. Another point to emphasise is that the term "open country" used in the 1949 Act is qualified by provisions (s. 60 (5)) which ensure that certain classes of land shall not be considered as "open country," as, for example, quarry land, railways, tramways, golf courses, aerodromes, and the widest category of this land is agricultural land (other than rough grazing). Therefore, agricultural land can never be the subject of an access order or agreement. Walkers, climbers and picnickers must remember that the farmer's fields are as private inside parks as outside.

It will be appreciated that none of the national parks in England or Wales are reserves of the kind to which the term "national park" is applied in America or Africa. In all the national parks in England and Wales the ordinary activities whereby people earn their living continue as before, and with these the county councils, as elected bodies, are directly concerned. The principal activity is agriculture, and there is, of course, no intention whatever of limiting agricultural output. But many remote and beautiful places which make excellent park areas are coveted by workers of minerals, by the Forestry Commission, and by the Service Departments for training purposes. The machinery of the 1949 Act ensures

that in national parks and in a number of areas chosen by the National Parks Commission as being of " outstanding natural beauty " the defacement of the countryside can be prevented unless there are overriding reasons to the contrary. The Commission's views are sought whenever any major change in the use of land is proposed in a national park. Where permission for private development is refused there is the usual right of appeal to the Minister of Housing and Local Government. Similar machinery applies to development by statutory undertakings and nationalised boards. The views of the Commission are also sought on development proposed by Government departments. Decisions of the Commission are taken in consultation with the Ministry of Housing and Local Government.

When a national park has been established, the problem of enabling people to enjoy the park to the full arises. In this connection the 1949 Act specifically provides (s. 12) that a local planning authority whose area consists of or includes the whole or any part of a national park may make arrangements for securing the provision in their area : (*a*) of accommodation, meals and refreshments (including intoxicating liquors) ; (*b*) of camping sites ; and (*c*) of parking places and means of access thereto and egress therefrom, and may for the purposes of such arrangements erect such buildings and carry out such work as may appear to them to be necessary or expedient. But a local planning authority must not do any of these things unless the existing facilities are inadequate or unsatisfactory. A local planning authority may acquire any land or buildings which they require for any of the above-mentioned purposes. The Act provides (ss. 97, 98) for the making of regulations governing the payment of grants to meet all or part of the expenditure incurred by local authorities in the exercise of their powers under the 1949 Act and also the Town and Country Planning Act, 1947, as respects national parks and areas of outstanding natural beauty. The most recent regulations are known as the National Parks and Access to the Countryside (Grants) Regulations, 1954. The nature of the expenditure which is eligible for grant under the 1949 Act includes the provision of accommodation, the improvement of waterways, the removal of buildings, tree planting and tree preservation, restoring or improving the appearance of derelict land, the making of access agreements and access orders, the appointment of wardens, and in connection with long-distance routes. The rate of grant is 75 per cent., or in the case of expenditure on work on waterways, up to 100 per cent. The appendices to these 1954 Regulations are worth noting. Appendix A details the items, such as legal costs and surveyor's fees, which may be included in the costs of " acquisition," and Appendix B likewise states the items which may be included in the cost of " compensation " (other than in respect of compulsory acquisition).

M.

A Conveyancer's Diary

A POINT ON PRESCRIPTION

THE Prescription Act, 1832, is full of difficulties, some inherent in the changes in the law which this Act effected, others which afflict the practitioner of the present day because he cannot easily transport himself mentally to the legal climate of the period of the Act and so appreciate not only why these changes were made, but also why it was necessary to make them in this particular way. Thus, s. 2 of the Act, which goes to the root of the reforms made by the Act so far as easements are concerned (s. 1 dealing only with profits *à prendre*), did not simply enact that in addition to any other way in which it could be shown that an easement had been acquired, it would in future be sufficient to show that an easement had been enjoyed for a full period of twenty years to make the right inexpugnable. It enacted instead, in effect, that a claim to an easement by prescription at common law, if it satisfied all the other requirements to which such a claim was then (and still remains) subject, should not be defeated on the ground that it had not been uninterruptedly enjoyed from the time whereof the memory of man runneth not to the contrary, if it could be shown that the easement had been " actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years."

This was one of the provisions of this Act which was considered recently by the Court of Appeal in *Reilly* v. *Orange* [1955] 1 W.L.R. 616, and p. 353, *ante*. To this provision there is an appendage in s. 4, which provides, first, that this period of twenty years is to be deemed to be " the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question," and secondly, that no act is to be deemed to be an interruption for the purposes, *inter alia*, of s. 2 of the Act, unless the same shall have been or shall be acquiesced in for one year after the party interrupted shall have had or shall have notice thereof.

The effect of these sections on a claim to an easement by prescription under the Act was considered in the famous case of *Flight* v. *Thomas* (1841), 8 Cl. & F. 231. It was proved at the trial that the plaintiff (defendant in error, as the description then was, when the case reached the House of Lords) was possessed of a house with certain windows through which light came, and these had existed for nineteen years and three hundred and thirty days when the defendant on the 1st January, 1838, erected a wall which blocked one of the windows ; that a space of a year had not elapsed between the time of the erection of the wall and the commencement of the action ; that at the time of the commencement of the action there had not been any interruption of the plaintiff's enjoyment of light through the window in question except the interruption caused by the building of the wall by the defendant, and finally that the light had not been enjoyed by any consent or agreement made in writing. On these facts, Parke, B., directed the jury to enter a verdict for the plaintiff. The case went on appeal to the Court of Exchequer Chamber (reported in 11 A. & E. 688), and then to the House of Lords, where the question argued was whether there had been a sufficient period of enjoyment of the light to entitle the plaintiff to an easement by virtue of the Act of 1832. This question Lord Cottenham, L.C., paraphrased as follows : there had been an actual enjoyment of less than twenty years, in ordinary language, but the question was not whether there had been twenty years' enjoyment in the ordinary sense, but whether there had been twenty years' enjoyment within the meaning of the Act. Reading ss. 2 and 4 of the Act together, their meaning was that there must be twenty years from the commencement of the right of enjoyment to the commencement of the suit, and no interruption was to be considered as an interruption within the meaning of the Act, that is so as to interfere with the twenty years, unless the interruption should last a year. The Act explained what it meant by enjoyment without interruption of one year's duration : twenty years had

to elapse, but no interruption was considered as preventing the twenty years from running unless it had a duration of a year.

On that footing the plaintiff was entitled to his verdict, since a period of over twenty years had elapsed between the commencement of the right to enjoy the light (sometime in February, 1818), and the commencement of the action (13th February, 1838), and the only interruption thereof shown in this period was one of less than a year (1st January to 13th February, 1838).

It was sought to apply this decision to rather different facts in *Reilly* v. *Orange*. The plaintiff granted the defendant permission to use a certain way over the plaintiff's land, and the defendant used this way for many years, until a dispute arose between the parties and the plaintiff gave notice to the defendant determining the latter's right to use the way. Subsequently, by proceedings commenced on the 1st July, 1954, the plaintiff claimed a declaration in the county court to the effect that the defendant's right to use the way had determined, or appropriate ancillary relief. The defendant contended, *inter alia*, that he had acquired a right to the way by prescription under the Prescription Act, 1832, but he was unable to prove that this enjoyment of the right had commenced as early as the 1st July, 1934; the finding in the county court on this point was that it had commenced in September, 1934, i.e., less (but only a few months less) than the full period of twenty years laid down by s. 2 of the Act.

But the defendant argued that as over nineteen years' user of the way had been proved down to the commencement of the action, the decision in *Flight* v. *Thomas* was applicable; the commencement of the action constituted an interruption of the enjoyment of the way, and inasmuch as the action had not been commenced until after the enjoyment had lasted for more than nineteen years, the interruption so constituted could not last for the required period of one year, and the defendant's right to an easement was complete at the time of action brought.

This argument was not accepted by the Court of Appeal, for reasons given by Jenkins, L.J., who delivered the leading judgment in which Singleton and Morris, L.JJ., expressed their concurrence. What the Act required, as appeared from the combined effect of ss. 2 and 4, was the full period of twenty years, being "the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question." The commencement of the suit or action was clearly not an interruption within the meaning of s. 4, but was the event marking the date down to which the requisite period of user must be shown. What had to be shown was a full twenty years reckoned down to the date of action brought. That had to be an uninterrupted period, but in considering whether it was an uninterrupted period or not, interruptions not acquiesced in for at least a year were not to be counted as interruptions. The plea based on prescription under the Act therefore failed.

This decision shows the desirability, where a claim to an easement is put forward and based on prescription under the Act (and in practice this is the only kind of prescription claim to be met with, or at any rate seriously considered, nowadays) of issuing a writ or a plaint without delay. If the plaintiff had allowed any considerable time to be spent in correspondence between the parties or their advisers in this matter, the decision in *Flight* v. *Thomas* would have applied without much doubt to this case.

"A B C"

Landlord and Tenant Notebook

"IN THE NATURE OF A FINE"

THE above expression occurs in the Law of Property Act, 1925, s. 144, by which any covenant, etc., in a lease against assigning, underletting, etc., without licence or consent is, unless the lease contains an express provision to the contrary, deemed to be subject to a proviso that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent, etc.; and in the Landlord and Tenant Act, 1927, s. 19 (3), by which any covenant, etc., against the alteration of the user of the demised premises, without licence or consent, shall, if the alteration does not involve any structural alteration of the premises, be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, shall be payable for or in respect of such licence or consent, etc. The effect of each of these enactments was considered in *Comber* v. *Fleet Electrics, Ltd.* [1955] 1 W.L.R. 566; *ante*, p. 337.

In 1950 or 1951 a city corporation acquired the front part of a shop which the defendants held of the plaintiffs under a 21-year lease that had commenced in 1949, and the corporation thereby became liable to pay each party £1,000 in compensation. At about the same time the defendants became anxious to assign the term to an assignee who proposed to sub-let it to a company. In the lease, the defendants had covenanted (i) not to assign without the plaintiffs' consent, and (ii) not without the plaintiffs' consent to use the shop for any purpose other than the carrying on of the business of sellers by retail of certain specified and other domestic electric appliances. As the intended sub-lessees wanted to carry on the business of ladies' outfitters consent had to be sought under this provision as well as under that relating to alienation.

On 22nd May, 1951, the defendants gave the plaintiffs a signed undertaking, not under seal, by which they undertook, in consideration of the plaintiffs granting them the desired licence (covering both requirements), to assign to the plaintiffs the proportion of the compensation recoverable from the corporation, and also to pay the plaintiffs certain other sums. Two days later the licence was granted. The plaintiffs then asked the corporation to pay them direct but the corporation refused to do so in the absence of a formal assignment. The defendants then refused to execute such an assignment, and the plaintiffs brought the action for specific performance of the undertaking of 22nd May, 1951.

The defendants pleaded the enactments cited in my opening paragraph, alleging, that is, that the assignment demanded was a "fine or a sum of money in the nature of a fine." They also put forward that their undertaking was for an illegal consideration, or for no consideration.

Vaisey, J., came to the conclusion that there was indeed no consideration for the undertaking. The effect of the statutory provisions was that a landlord might grant or might refuse consent, but if he stipulated for the payment of money or money's worth, that was for a fine or anything in the nature of a fine, he was contravening what the law said must be read into the terms of every lease. The words of s. 19 (3) of the Landlord and Tenant Act, 1927 (which subsection, in another part of the judgment, the learned judge had said he found very difficult to understand), made this conclusion irresistible: the

lessees' undertaking would have to be implemented by their collecting the money and handing it over, or by their releasing their right to compensation and permitting the corporation to hand it over to the landlords, " and that seems to me as plainly as possible a fine or, if it is not a fine, it is money in the nature of a fine." While no authority was cited, the decision on this point undoubtedly harmonises with what was said about the expression in *Gardner & Co.* v. *Cone* [1928] Ch. 955, in which Maugham, J., citing the Law of Property Act, 1925, s. 205 (1) (xxiii) (" includes premium or foregift and any payment, *consideration, or benefit* in the nature of a fine, premium or foregift "), said that it would have covered a stipulation that a " free " public-house should become " tied." (For an example of a payment legitimately demanded, see the county court decision in *Sheldrake* v. *Chesterman* (1924), 69 SOL. J. 327.)

Vaisey, J.'s judgment contained a number of *dicta* which are of interest. The learned judge's sympathies were very clearly with the plaintiffs, and he mentioned that if money did pass under a bargain for the granting of consent he was very doubtful whether the landlord would be subject to any penalty for having received it, or could be obliged to pay it back or account for it in any way (but " unfortunately in this case that is not what happened ") ; and referred to *Andrew* v. *Bridgman* [1907] 2 K.B. 494 (C.A.) as showing that an agreement to pay for consent to an assignment was not illegal (under the Conveyancing Act, 1892, s. 3, then in force) : it made the payment something not contracted for ; and to *Waite* v. *Jennings* [1906] 2 K.B. 11 (C.A.) in which an attempt to recover such a payment failed. There is, indeed, a difference between an action on a contract and an action for money had and received to the use of the plaintiff.

But in this connection, the learned judge also indicated his view that if the document of 22nd May, 1951, had been a deed the position would have been different ; and it may be that a later passage darkly hinting that it may be possible, in spite of the best intentions of the Legislature, in many cases to circumvent the provisions of the Landlord and Tenant Act, 1927, s. 19 (3), was based on this view. Now, it is correct that a contract under seal is enforceable without consideration ; but, reading the section as a whole, one finds in subs. (1) (*a*) that all covenants against assigning, subletting, etc., without consent are deemed to be subject to a proviso that consent is not to be unreasonably withheld, and while there is no corresponding proviso in subs. (3) relating to consent to alteration of user, *Treloar* v. *Bigge* (1874), L.R. 9 Ex. 151, at least suggests that it might be dangerous for a landlord to propose a deed of this kind. In that case, dealing with a proviso (express) by which consent to alienation was not to be arbitrarily withheld, Kelly, C.B., said that it prevented the covenant *from operating* in a case of arbitrary refusal on the part of the lessor ; Amphlett, B., that arbitrary withholding relieved the tenant of his covenant. The proviso imported into covenants against altering user by the Landlord and Tenant Act, 1927, s. 19 (3), has this effect—I quote from Vaisey, J.'s judgment in the recent case : " . . . this subsection, which was undoubtedly passed, I suppose, with the idea that it is the tenant who has to be protected and the landlord who has to suffer. The landlord could either refuse his consent or he could grant it, but if he grants it and he stipulates for the payment of money or money's worth . . . he is contravening that which the law says must be read into the terms of every lease, namely, a proviso that no fine or sum of money in the nature of a fine shall be paid for or in respect of any such licence or consent." It could certainly be argued that, by parity of reasoning, the suggestion of a deed would prevent the covenant from operating and release the covenantor. At all events, the landlord would do well to tread warily, guided by Maugham, J.'s careful analysis of the negotiations in *Gardner & Co.* v. *Cone, supra.*

That the learned judge was out of sympathy with the idea mentioned is made even more plain by another passage, describing the provision which interferes fundamentally with the ordinary rights of the subjects of Her Majesty in this country to make contracts in this respect, according to their wishes and inclinations. This may be so, but it is, perhaps, hardly the criticism one would expect to hear expressed in the Chancery Division ! Equity has for centuries tended rather to sympathise with tenants bound by restrictions on alienation and user ; the former kind were described by Lord Eldon in *Church* v. *Brown* (1808), 15 Ves. 258, as being " in contradiction to the quantity of interest which the demise itself without special words is to give the lessee " and, despite the conflict between equity and common law, the learned Lord Chancellor also approvingly characterised such covenants as " having been always construed by courts of law with the utmost jealousy to prevent the restraint going beyond the express stipulation." Apart from this, there is, surely, something to be said for not allowing people to acquire rights rather than permit them to acquire them but then prevent them from enforcing them—which has been and is equity's *modus operandi*, especially in the case of provisos for re-entry, found in contracts of tenancy made according to the parties' wishes and inclinations ! I am reminded of some praise once unexpectedly bestowed by a transatlantic theatrical financier, on the censorship of plays exercised by our Lord Chamberlain ; for in his State, there being no counterpart to that functionary, what might happen was that after vast sums had been spent in production a first night could become a last night owing to police action. Such action might include the arrest, on the stage, of the whole cast ; dramatic but, from the backers' viewpoint, as well as the actors', unwelcome.

R. B.

HERE AND THERE

UPS AND DOWNS

THE human see-saw never stays still, suspended in perfect equilibrium. At one end someone's always down or going down. The New Poor are not a new phenomenon. The Wars of the Roses, the Reformation, the Civil War, the wars of Marlborough, the wars of Napoleon all shifted the balance of privilege and the sole sad consolation of the losers was to abuse the New Rich or the New Privileged. It's the same with age-groups. As the young go up, the older ones go down. Hence, the never ending denigration of the young, generation by generation. But the young have the satisfaction of writing obituaries of their critical elders before, imperceptibly to themselves, they are transformed into critical old buffers in their turn. History repeats itself, but with variations. The unprecedented feature of our own time, in England at any rate, is that, for once, the Common Man is up and really having a high old time, telling his contemporaries where they get off the trains or the dockside or the pit-head and receiving, as of right, all the flattery that used to go to princes and noblemen. The Common Child who, one presumes, is the father of the Common Man, is also in on the party, though the adjective when attached to him has a less sturdily laudatory ring about it. The Common Child, as we know him, has not only the customary advantages of merely being young ;

he has also got the bit between his teeth to such a degree that a rather well-known authority in the juvenile courts recently asked the cowed and cowering elders: Are you afraid of him—or her?

DOMESTIC TYRANT

ACCORDINGLY, it is with quickened interest that one turns to the news from the juvenile courts for clues to the shape of things to come, since those courts, one supposes, stand in relation to the assizes and quarter sessions rather as well-conducted preparatory schools—at any rate that's how it often works out. When Sir Basil Henriques asked: Are you afraid of your children? one had the impression that he was thinking in terms of subservience to the moral pressure exerted by the blackmailer rather than crude physical terror. But just look at this bit of news from the juvenile court at Bristol. Here was a father, six feet tall, complaining that his eight-year-old son, two feet shorter, one of three children, had knocked him about so ferociously that the neighbours had twice sent for the police and he had had to see a doctor. "I cannot do anything with him," said the unfortunate man, complaining that the boy was beyond control. "He wants to play with us all the time," added the mother. "It wears us out and then he gets fierce." It is often said that it is the truly strong who are the gentlest and it may be that the almost preternatural restraint of these parents has its roots in the inner strength of the martyrs and the contemplative saints. After all, if they cared to appeal to brute force, both *avoirdupois* weight and weight of numbers are on their side. Two to one is a strong working majority. Tactically they are in a position to outflank and outmanœuvre the diminutive forces opposed to them. Why, then, is it apparently child's play to hold them in check and take the offensive? Larger problems can often be seen more lucidly if reduced to the domestic scale and all the arguments for and against pacifism and corporal punishment can be tested very neatly in terms of this small boy and his parents. (It would, one supposes, be begging the question to say the "naughty" boy because the psychiatrists would doubtless affirm with one voice that he was what they had made him by early influences.) Very well then, nobody at this time of day (or ever, one would think) would recommend parents to behave like Mr. Murdstone, although the result would be to maintain very good order in the home, if order were all. At the other end of the scale the pacifists and the psychiatrists would probably recommend that the little lad should be talked into gentleness. It can be done. We know that there are ladies who have acquired the art of nursing leopards in their laps and have survived to write books about it, and even savage humans (far, far more complex animals) have been known to be conciliated by the right approach. But in ordinary human affairs there is one practical difficulty. Psychiatrists do not grow by every hearthstone and in the practical running of the world there are emergencies in which one has to be ready to be a little rough. In a controversy between parent and child a clip on the ear doesn't prove that the parent is in the right, but as a *riposte* to violence on the child's part, then if vigorously and effectively directed, it is a useful social lesson on the inadvisability of opening negotiations by physical violence, save, of course, in the improbable event of enjoying an overwhelming superiority. Thus for general purposes the habit of peaceful negotiation will be implanted and (save under a compulsive sense of a burning injustice) will probably flourish.

THE EARLY BRIDE

ANOTHER case from the juvenile courts comes from Birmingham, where the magistrates ruled that a slim blonde young lady, fifteen last January, should be released from the supervision order placed on her earlier this year when it was ruled that she need no longer attend school. The fact was that she wanted to go to London on what, she said, was really her honeymoon. It was when she was married in February to her twenty-three-year-old fiancé that the court had released her from the more theoretical educational influences of Form 3A. The marriage had taken place in Eire because she was too young for an English wedding. More moderate, but not less self assured than the authoritarian little lad from Bristol, she was quite sure of her position and gave this encouraging advice to engaged couples: "Marry as soon as possible. It's much more fun than being a schoolgirl." But perhaps girls having a way of acquiring a grown-up manner pretty early, there is nothing so very characteristically modern about the young lady. Over a century ago Miss Annie Jane Ward, just three months over twelve, was eloping from her school at Appleby with the young man who had been music master there, to marry him over the Scottish border. "I shall leave you to fix the place we will meet, but at all events it must be retired," she wrote. "You need not have any misgiving in laying your heart before me. You might have been sure I should only be too happy at your doing so." She could write a good clear letter, couldn't she? Her love, John Atkinson, was afterwards sent to prison for nine months for abduction, but he had won his bride.

RICHARD ROE.

REVIEWS

Topham's Company Law. Twelfth Edition. By JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law, and SEFTON D. TEMKIN, M.A., LL.B., of Gray's Inn and the Northern Circuit, Barrister-at-Law. 1955. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 17s. 6d. net.

Topham is well established but is beginning to need a really careful check through to eliminate error. In the last edition the worst feature was a lamentable specimen prospectus and in the new edition this prospectus is still poor. To give two examples only, one can mention (i) an auditors' report addressed to a company and dated nine days before its incorporation, (ii) subscribers' shares apparently disregarded since all the shares issued or to be issued are being offered to the public. The "profits" paragraph in the prospectus is misleading since it implies an earnings cover of 12.45 per cent. for the ordinary shares, but taking into account both income tax and profits tax the maximum ordinary dividend which could be paid out of the yearly profits specified would be under 7 per cent.; neither the 4 per cent. preference shares nor the ordinary shares could be called attractive investments at par. In general the book remains a sound and useful book for the student, even if at times the law is somewhat over-simplified.

Farrar's Company Law. Fourth Edition. By HARRY FARRAR, M.C., M.A. (Oxon.), LL.B. (Lond.), of Lincoln's Inn, Barrister-at-Law. 1955. London: Cassell & Co., Ltd. 15s. net.

This really is an extremely clear and well-written book on its subject and might well have achieved many more editions than four were it not for the fact that there are far too many books on the subject. The price of 15s. is remarkably low for such an excellent book running to nearly 600 pp. (excluding Appendices). The author has failed to remove a reference to the short-lived duty on "bonus issues," but there are only a few instances of such errors and few text-books can boast of freedom from them. A useful book for those who do not regard the cost of the more expensive publications as worth while.

Ranking and Spicer's Company Law. Tenth Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and T. W. SOUTH, B.A., of the Middle Temple, Barrister-at-Law. 1955. London: H. F. L. (Publishers), Ltd. £1 5s. net.

This well-known and useful publication appears in a new and more convenient format. In other respects it is much the same as before. Your reviewer regrets to see that a paragraph upon which unfavourable comment was made by him in a review of the eighth edition still remains unchanged; perhaps the editors do not read reviews. Within a text of 419 pp. (excluding Appendices) there is a great deal of well condensed information which, generally speaking, is clear and accurate.

Estate Duty and Private Companies. By A. R. ILERSIC, M.Sc. (Econ.), B.Com. 1955. London: The Incorporated Accountants' Research Committee. 4s. net.

This is another of the interesting series of pamphlets sponsored by "The Society," some of which have previously been noticed in these columns. The author has drawn from the various memoranda submitted to the Chancellor of the Exchequer by accountancy and other representative bodies, and the approach to the subject is a broad, economic one rather than a narrow and technical one. As such it is most stimulating to practitioners whose daily contact with the subject-matter necessarily tends to the technical. Having said that, your reviewer does not want to indulge in criticisms of detail, but the author is less than fair to both the Revenue authorities and to the legislators of 1954. At p. 9 he gives an example of "the Revenue attitude of mind," but in fact Parliament of 1940 gave the authorities no alternative but to adopt that attitude of mind. At p. 23 he concludes that the Finance Act, 1954, has done nothing to eliminate control conferred by accident for a limited period, but your reviewer thought that that is exactly what is done by s. 29 (2).

Despite these small criticisms, the book is one which can be read with great interest and advantage by all concerned with its subject-matter.

Oyez Practice Notes No. 2. Registration of Business Names. Third Edition. By J. F. JOSLING, Solicitor. 1955. London: The Solicitors' Law Stationery Society, Ltd. 6s. net.

The Oyez Series of Practice Notes provide in handy form a great deal of practical information which is often needed, but by no means easy to trace. Almost every solicitor, surely, must have to deal with the registration of business names, if only for his own firm, and in this small book (41 pp.) he can find all that he wants to know set out clearly and accurately. Six shillings spent on this book would not be regretted.

Landlord and Tenant Act, 1954. By T. J. SOPHIAN, of the Inner Temple and South Eastern Circuit, Barrister-at-Law. 1955. London: Staples Press, Ltd. £1 10s. net.

A large number of publications explaining the Landlord and Tenant Act, 1954, appeared almost as soon as the statute became law; and there is a great deal to be said for waiting till some provisions have been interpreted by the courts before writing about a new Act in general, a revolutionary one like this measure in particular. Even so, accurate timing is impossible; and it is not Mr. Sophian's fault that he has not been able to include *Castle Laundry (London), Ltd.* v. *Read* [1955] 2 W.L.R. 943; *ante*, p. 306, as well as *Orman Bros., Ltd.* v. *Greenbaum* [1954] 1 W.L.R. 1520; 98 SOL. J. 887, or, indeed, mention that the latter decision was upheld on appeal ([1955] 1 W.L.R. 248; *ante*, p. 185). For what many practitioners must be wondering about now is: what exactly are the incidents of the "tenancy" which follows a tenancy of business premises which has "come to an end" but not "terminated"; Mr. Sophian rightly draws attention to the contrast between these phenomena in one of his notes to s. 24 (p. 73).

That note is one of many which, both in the case of the more transient Pt. I and that of the more drastic Pt. II, will be of the greatest assistance to the practitioner called upon to consider and to operate this legislation; and, if criticism is to be levelled at the author's work, it must take the form of a wish that rather more references to those decisions which are likely to prove in point had been given. The notes are, indeed, a little uneven in this respect; thus we find attention drawn to two decisions on unpunctuality in the matter of payment of rent (s. 28 (1) (*b*): p. 83) but none is referred to in the interesting observations on the nature of acquiescence in breach of covenants against business user in the notes to s. 23 (p. 71). Such deficiencies might with advantage be supplied when the time comes for the appearance of a second edition.

The work concludes with a very full set of appendices, giving texts of statutes, rules of court and regulations.

The Complete Valuation Practice. Fourth Edition. By N. E. MUSTOE, Q.C., M.A., LL.B., H. BRIAN EVE, F.R.I.C.S., Chartered Surveyor, Past President of the Rating Surveyors' Association, and BRYAN ANSTEY, B.Sc. (Estate Management), F.R.I.C.S., F.A.I., F.I.A.S., Chartered Surveyor, Chartered Auctioneer and Estate Agent. 1955. London: The Estates Gazette, Ltd. £2 net.

This is a handbook primarily for the professional valuer and, after considering the general principles of valuation, it includes chapters upon specific matters ranging from town properties to farms and from licensed premises to life interests and reversions. In addition the book deals with the special features of valuations for such purposes as mortgage, probate, rating and income tax.

Much valuation work today is affected by the provisions of special statutes such as the Acquisition of Land (Assessment of Compensation) Act, 1919, and the various Town and Country Planning Acts and regulations and these and the relevant case law are appropriately dealt with as may be indicated by tables of cases and statutes extending to some ten pages. The six appendices include reprints of the Lands Tribunal Rules, 1949, some of the relevant statutes, and the current scales of professional charges.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WILL: GIFT TO EMPLOYEES "IN PERPETUITY FOR CHARITABLE PURPOSES ONLY": INVALID

Baker *v.* National Trust Co., Ltd., and Others

Viscount Simonds, L.C., Lord Oaksey, Lord Reid, Lord Tucker and Lord Somervell of Harrow. 19th May, 1955

Appeal from the Supreme Court of Canada.

The testator, Herbert Coplin Cox, who died on 17th September, 1947, directed by his will, dated 23rd June, 1938, that his trustees should hold the residue of his estate upon trust "to pay the income thereof in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependants of such employees . . . subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the board of directors of the said . . . company, as they . . . in their absolute discretion shall from time to time decide . . ." An originating summons was taken out by the National Trust Co., Ltd., and A. H. Cox, as administrators and trustees of the will, for the determination of the question whether the above provision was a valid charitable bequest. Edwin G. Baker was president of The Canada Life Assurance Co. and represented the interests of the employees and ex-employees. The other parties were the next-of-kin, the Official Guardian for Ontario and the Public Trustee for Ontario, who represented the interests of charities generally. Wells, J., before whom the summons came in the Supreme Court of Ontario, declared that the gift constituted a valid charitable bequest for the relief of poverty. The Court of Appeal for Ontario, on appeal, reversed the decision of Wells, J., and held that the trust was invalid. On further appeal, the Supreme Court of Canada, by a majority, affirmed the decision of the Court of Appeal. Appeals from that decision, which were consolidated, were brought by Edwin G. Baker and by the Public Trustee for Ontario.

LORD SOMERVELL OF HARROW, giving the judgment, said that their lordships were satisfied, on construction, that there

was no general charitable trust for " indirect " benefits, and that the only beneficiaries within the bequest were employees and ex-employees and their dependants. Secondly, the bequest must be read as if after or instead of the words " for charitable purposes only " there was set out in full Lord Macnaghten's definition of charity in *Commissioners for Special Purposes of Income Tax* v. *Pemsel* [1891] A.C. 531, at p. 583: " 'Charity,' in its legal sense, comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads." If the bequest was so read, it followed that the trustees were given a discretion to apply the income of the fund in perpetuity for the benefit of the employees in question for any of the purposes enumerated in Lord Macnaghten's classification, and if that was so, it was not in doubt that the gift as a whole was not a good charitable gift. If it was open to doubt whether a gift in relief of poverty of such a group was valid, it was clear that a gift for their education was not (*Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297). The testator could not have supposed that persons in the employment of the company would be in poverty save in most exceptional circumstances, or that former servants would often require financial assistance for that reason, and it was impossible in the circumstances to hold that he intended the fund to be held solely for the purpose of relieving poverty among his beneficiaries if it should prove, as here, that no other purpose could be sustained as valid. Appeals dismissed.

APPEARANCES: *John J. Robinette*, Q.C. (Canada) and *Denys Buckley* (*Slaughter & May*); *Geoffrey Cross*, Q.C., *Armand Racine*, Q.C. (Canada) and *R. O. Wilberforce*, Q.C. (*Lawrence Jones & Co.*); *Denys Buckley* (*Slaughter and May*); *Milner Holland*, Q.C., *J. D. Arnup*, Q.C. (Canada) and *T. A. C. Burgess* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 42**

COURT OF APPEAL

FACTORY: CONDITION OF STAIRCASE: " SPECIAL CIRCUMSTANCES . . . SPECIALLY LIABLE TO CAUSE ACCIDENTS "

Harris *v.* Rugby Portland Cement Co., Ltd.

Denning, Birkett and Romer, L.JJ. 13th May, 1955

Appeal from Oliver, J.

Section 25 (2) of the Factories Act, 1937, requires that a substantial hand-rail shall be provided on both sides of a staircase which " owing to the . . . condition of the surface of the steps or other special circumstances, is specially liable to cause accidents." A staircase in a factory had a hand-rail on one side and on the other a rail so close to the wall that it could not be gripped. The top sill of the staircase had a three-inch metal edge which had worn smooth and shiny. Near the staircase was a hatchway from which grease in containers was issued from time to time. The stairs were kept well cleaned, and no accident had occurred and no complaint been made of the condition of the stairs during fifteen years of use. On 12th August, 1953, a workman slipped on an isolated piece of grease on the top sill and broke his leg. In an action against his employers for negligence and breaches of statutory duties, the trial judge held that the employers were liable only for breach of their duty under subs. (2) of s. 25 of the Act of 1937. The employers appealed.

DENNING, L.J., said that the judge had said that the " condition of the surface " of the steps was faulty in that the top sill was shiny and highly polished owing to user; and that there were " special circumstances " in that there was a hatchway a couple of feet away from which grease was periodically issued; and he had held, therefore, that there ought to have been two hand-rails. On the evidence, his lordship was unable to agree with that view. The judge had not given sufficient effect to the words of the subsection " specially liable." As to " the condition of the surface," the cogent factor in the evidence was that ever since 1938 until the accident in 1953 there had never been a single accident on these stairs at all, nor indeed on the fourteen similar stairs in this factory. His lordship took it that " specially liable " meant more than usually liable, and he could not see how one could say that the condition of the steps was specially liable to cause accidents when no accident had happened for all those years. As to " special circumstances," the mere fact that there was a hatchway was not likely to cause danger. The one piece of grease causing the accident was the only piece of grease ever known to be on the steps all the time the staircase had been there. " Special circumstances " must be something which was being continually repeated or so often repeated as to be specially liable to cause accidents, so that the permanent protection of two hand-rails was necessary. That was not the case here. He would allow the appeal.

BIRKETT, L.J., agreed. When there was a staircase of this kind, one must have regard to its history.

ROMER, L.J., gave a concurring judgment. Appeal allowed.

APPEARANCES: *T. Michael Eastham* (*Hugh-Jones & Co.*); *E. Martin Jukes*, Q.C., and *Malcolm Morris* (*Rowley, Ashworth and Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 648**

CONTRACT: OFFER AND ACCEPTANCE: CONTRACT MADE BY TELEPRINTER

Entores, Ltd. *v.* Miles Far East Corporation

Denning, Birkett and Parker, L.JJ. 17th May, 1955

Interlocutory appeal from Donovan, J.

The plaintiffs, Entores, Ltd., were an English company with a registered office in London, and the defendants, Miles Far East Corporation, were an American corporation with headquarters in New York, and with agents all over the world, including a Dutch company in Amsterdam. Both the plaintiffs and the defendants' agents in Amsterdam had in their office an equipment known as Telex Service by which a message could be dispatched by a teleprinter operated like a typewriter in one country and, on such machines being connected, the message was instantaneously received and typed in another. The plaintiffs desired to make a contract with the defendants' agents in Amsterdam for the purchase of copper cathodes from the defendant corporation. In September, 1954, a series of communications by Telex passed between the plaintiffs and the Dutch company, the material one being a counter-offer made by the plaintiffs on 8th September, 1954, and an acceptance of that offer by the Dutch agents on behalf of the defendants received by the plaintiffs in London by Telex on 10th September, 1954. The plaintiffs later alleged that there had been a breach by the defendants of the contract. They accordingly applied for leave to serve notice of a writ on the defendants in New York on the ground that the contract was made in England and, therefore, fell within the terms of R.S.C., Ord. 11, r. 1 (*e*). The master granted the plaintiffs' application and on appeal his decision was affirmed by Donovan, J. The defendants appealed, contending that the contract was made in Holland.

DENNING, L.J., said that when a contract was made by post it was clear law throughout the common-law countries that the acceptance was complete as soon as a letter notifying it was put into the post-box, and that was the place where the contract was made, but there was no clear rule about contracts made by telephone or Telex, where the communications between the parties were virtually instantaneous. They stood on a different footing. If one man shouted an offer to another across a river, but did not hear his acceptance because it was drowned by an aircraft flying overhead, there was no contract at that moment. Not until the first man had the answer was the other bound. Where two people made a contract by telephone, if one man made an offer to another by telephone and in the middle of his reply the line went dead, so that the first man did not hear the words of acceptance, there was no contract until the other had got through again so as to make sure that the first man had heard. Again, the contract was only complete when the first man had the answer accepting the offer. Lastly, in the case of the Telex, it was not until the message of acceptance was received that the contract was complete. His conclusion was that the rule about instantaneous communications between the parties was different from the rule about the post. The contract was only complete when the acceptance was received by the offeror; and the contract was made at the place where the acceptance was received. In a matter of that kind, however, it was very important that the countries of the world should have the same rule. Most of the European countries had substantially the same rule as that which he had stated. Indeed, they applied it to contracts by post as well as instantaneous communications. But in the United States of America it appeared that instantaneous communications were treated in the same way as postal

communications here. In view of this divergence, his lordship thought that the matter should be considered on principle, and so considered, he had come to the view he had stated. He was glad to see that Professor Winfield in this country and Professor Williston in the United States of America had taken the same view. Applying those principles, the contract in the present case was, in his view, made in London where the acceptance was received, and notice of a writ could, therefore, be served out of the jurisdiction. The appeal must be dismissed.

BIRKETT and PARKER, L.JJ., delivered assenting judgments. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *Gerald Gardiner*, Q.C., and *S. B. R. Cooke* (*Allen & Overy*); *Maurice Lyell*, Q.C., and *Dennis Lloyd* (*Smiles & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [3 W.L.R. 48

CHANCERY DIVISION

LANDLORD AND TENANT: CLAIM FOR COMPENSATION FOR IMPROVEMENTS: IMPROVEMENTS MADE PURSUANT TO A "CONTRACT"

Owen Owen Estate, Ltd. *v.* Livett and Others

Upjohn, J. 12th May, 1955

Adjourned summons.

The Landlord and Tenant Act, 1927, provides by s. 1: "(1) . . . a tenant . . . shall, if a claim for the purpose is made in the prescribed manner— . . . be entitled, at the termination of the tenancy, on quitting his holding, to be paid by his landlord compensation in respect of any improvement . . . made by him . . . which at the termination of the tenancy adds to the letting value of the holding: . . . (3) In the absence of agreement between the parties, all questions as to the right to compensation under this section, or as to the amount thereof, shall be determined by the tribunal hereinafter mentioned. . . ." By s. 2: "(1) A tenant shall not be entitled to compensation . . . (*b*) in respect of any improvement . . . which the tenant or his predecessors in title were under an obligation to make in pursuance of a contract entered into . . . for valuable consideration, including a building lease: . . ." By s. 3: "(1) Where a tenant of a holding to which this Part of this Act applies proposes to make an improvement on his holding, he shall serve on his landlord notice of his intention to make such improvement . . . and if the landlord . . . serves on the tenant notice of objection, the tenant may, in the prescribed manner, apply to the tribunal, and the tribunal may . . . certify in the prescribed manner that the improvement is a proper improvement: . . ." The tenants of certain shop premises served on the landlord notice of a proposal to make improvements on the premises in the way of improved lavatory accommodation. The landlord served notice of objection, not on the merits but on the ground that the tenants were under an obligation to make the said improvements pursuant to a covenant in a sub-lease which they had executed, and that such sub-lease was a "contract" within the meaning of s. 2 (1) (*b*). The tenants applied by a summons to the court as the tribunal under the Act for a certificate that the improvements were proper improvements for which they were entitled to be compensated on the expiration of their tenancy, and contended that a "contract" within the subsection was limited to one made between a landlord and a tenant or their successors in title.

UPJOHN, J., said that *prima facie* the words of the subsection were wide enough to cover the sub-lease, under which the tenants were obliged to make the improvement. But it had been argued that the object of the Act was primarily to benefit the tenant and not the landlord (*Simpson* v. *Charrington & Co., Ltd.* [1934] 1 K.B. 64, at p. 69) so that it should be construed favourably to the tenant, and the word "contract" should be limited to one between the landlord and his successors and the tenant and his successors. But it was not possible to cut down the meaning of the perfectly general words of the subsection; the effect might be to deprive the tenant of part of the benefit of the improvement; but it was impossible to give other than a literal interpretation to the subsection, the words of which were apt to include the sub-lease. Accordingly, the tenant would not be entitled to compensation. As the dispute was one relating to the construction of the Act, the proceedings were not in the proper form, and a *pro forma* construction summons must be taken out under Ord. 54A, r. 1A. Order accordingly.

APPEARANCES: *G. Hesketh* (*Kimber, Bull & Co.*); *C. F. Fletcher-Cooke* (*Woolley, Tyler & Bury*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 1

EMERGENCY LEGISLATION: WAR DAMAGE: WORKING DRAWINGS USED IN MANUFACTURE EXCLUDED

J. H. Tucker & Co., Ltd. *v.* Board of Trade

Vaisey, J. 19th May, 1955

Adjourned summons.

The plaintiffs, J. H. Tucker & Co., Ltd., manufacturers of electrical accessories and components, asked for a declaration that the Board of Trade were not entitled to exclude from payments made to them under the War Damage Act, 1943, under the business scheme for the insurance of goods, the sum of £14,600, agreed value of some 15,000 working drawings owned by the plaintiffs, whose business premises were destroyed by enemy action on the night of 21st to 22nd November, 1940. The plaintiffs' claim to the sum of £14,600 was resisted by the Board of Trade.

VAISEY, J., said that this summons raised a question of construction arising under the War Damage Act, 1943, which lay within a small compass, and depended on the combined effect of ss. 84 (1) and 104 of the Act. It involved consideration of the problem of what were "documents owned for the purposes of a business" within the meaning of the proviso to s. 104. He must refer to the only judicial decision on this point, namely, *Hill* v. *R.* [1945] K.B. 329, a decision of Humphreys, J. The headnote was this: "Account books, such as journals and ledgers, used by an insurance broker in his business, are 'documents owned for the purposes of a business,' within the meaning of the proviso to s. 104 of the War Damage Act, 1943, and so excluded from insurance under the 'business scheme' operated by the Board of Trade by virtue of s. 83 of the Act." He thought that "any documents owned for the purposes of a business" meant, on the whole, written documents of any kind used or held or owned for any of the purposes of a business—it might, for instance, be for the purposes of keeping the accounts of a business, or for making up bills for estimating quantities. These documents were clearly within the proviso to s. 104 and thus excluded from the operation of the Act under the decision of Humphreys, J. It seemed to him that "any documents owned for the purposes of a business" must include, according to the ordinary use of language, working drawings. He could not see where a line could be drawn between documents owned for the purposes of a business, and documents owned for the purpose of carrying on a business, or documents which were owned and used for both of such purposes. He would declare that on the true construction of ss. 84 and 104 of the Act the expression "goods" did not include these working drawings.

Declaration accordingly.

APPEARANCES: *Neville Gray*, Q.C., and *Eric Blain* (*Gregory, Rowcliffe & Co.*, for *Shakespeare & Vernon*, Birmingham); *Denys Buckley* (*Solicitor, Board of Trade*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 655

QUEEN'S BENCH DIVISION

CONTRACT: SALE OF GOODS AFLOAT "DUE LONDON APPROXIMATELY 8th JUNE": REJECTION ON LATE ARRIVAL

MacPherson Train & Co., Ltd. *v.* Howard Ross & Co., Ltd.

McNair, J. 27th April, 1955

Case stated by an umpire.

A contract for the sale of 5,064 cases of Australian peaches provided, *inter alia*: "Price—1s. 7¾d. per lb. ex Chambers Cold Store, London: 28 days free rent from date of arrival . . . shipment and destination—afloat per s.s. *Morton Bay* due London approximately 8th June." The ship was reported in London on 21st June, 1954, and the buyers refused to accept delivery. In an arbitration, the umpire stated a case.

MCNAIR, J., said that the first point was whether the words "due London approximately 8th June" merely, as the sellers contended, identified the ship and the voyage on which the goods were being imported, or, as the buyers contended, formed a

condition of the contract in the sense that they were in effect part of the description of the goods. It had been admitted that if the goods had been shipped on another ship a fundamental term of the contract would have been broken, and if that was so it followed that the words in question must be taken as part of the description of the goods. It was clear that the condition as to arrival had been broken, and that the goods when tendered did not correspond to that description, so that the buyers were entitled to reject. Judgment for buyers.

APPEARANCES: *Miss D. K. Dix* (*Holt, Beever & Kinsey*, for *S. Thornhill Tracey*, Steyning); *F. Hallis* (*Tarlo, Lyons & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 640**

SALE OF GOODS: C.I.F.: DELAY CLAUSE IF EXPORT OF GOODS PROHIBITED: WHETHER SELLER MUST PROVE IMPOSSIBILITY OF BUYING GOODS AFLOAT

J. H. Vantol, Ltd. *v.* Fairclough Dodd & Jones, Ltd.

McNair, J. 5th May, 1955

Special case stated by trade appeals committee.

A written contract for the sale of 100 tons Egyptian washed cottonseed oil to be shipped during the months of December, 1950–January, 1951, from Alexandria, at a price of £146 10s. per ton, c.i.f. Rotterdam, contained this clause: "Should the shipment be delayed by . . . prohibition of export . . . the time of shipment shall be extended by two months. Should the delay exceed two months, buyers shall have the option of cancelling the contract forthwith or accepting the goods for shipment as soon as possible . . ." On 12th December, 1950, the export of all cottonseed oil was prohibited by the Egyptian Government. On 3rd January, 1951, a licence was granted by the Egyptian Government for the export of certain cottonseed oil purchased in Egypt by the sellers under the present contract. On 17th February, the export of cottonseed oil was again prohibited and the prohibition continued until the end of April. On 22nd February, the buyers claimed that the sellers were in default. The award stated that no evidence was given by the sellers that goods within the contract could not have been obtained afloat.

MCNAIR, J., said that the seller under a c.i.f. contract could perform his contract either by shipping himself or by his agents goods in accordance with the contract during the contract period or by purchasing goods afloat which had been shipped during the contract period. Generally, a seller could not claim the protection of a clause which provided for cancellation of the contract if shipment was prevented by a specific cause unless he proved both that he was himself so prevented from shipping and that it was impossible for him to fulfil the contract by buying appropriate goods afloat which had been shipped during the contract period. The question was whether the sellers were protected by the delay clause. The buyers put forward two points: first, that the expression "should shipment be delayed" meant delay during the whole of the contract period remaining after the cause of the delay had come into force; and, secondly, that in any event the sellers must prove that there was no possibility of buying goods afloat which had been shipped before the prohibition came into force. In support of the first contention it was said that the contrary construction was unduly favourable to the sellers and so unreasonable. If, for instance, exports were prohibited in the first week in December, the sellers would have an extension down to the end of March. But it was by no means certain that such an extension would be unreasonable; and the contract had been drafted by persons familiar with the trade. As to the second point, the language showed that the parties were designedly providing protection for the sellers in a case where shipment by the sellers or their agents was delayed. The clause would not work in a business sense if the sellers had to prove not only that the shipment was delayed but also that they were unable to purchase goods afloat unaffected by the prohibition. Judgment for the sellers.

APPEARANCES: *A. A. Mocatta*, Q.C., and *J. F. Donaldson* (*Stephenson, Harwood & Tatham*); *T. G. Roche*, Q.C., and *A. J. Bateson* (*Thomas Cooper & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 642**

[PRACTICE NOTE]

PRACTICE AND PROCEDURE: TRIAL: DISAGREEMENT OF JURY: PROCEDURE FOR RE-HEARING

Davidson *v.* Rodwell

Ormerod, J. 19th May, 1955

Application.

At the conclusion of the hearing of a libel action before a jury on 13th May, 1955, the jury disagreed. There being some doubt as to the correct procedure for re-entry of the case for trial, Ormerod, J., gave liberty to apply.

ORMEROD, J., said that the Rules of the Supreme Court appeared to offer no assistance at all on this matter, but there had been a certain amount of research in the Associates Office and it appeared to be beyond doubt that the old practice was that the parties should be given leave or ordered to set down the case once again, and, of course, the fee on setting down would have to be paid by the party setting down the action. That was borne out to some extent at least by a note on p. 2862 of the Annual Practice (1955), dealing with court fees and stamps, and which referred to a decision of the Treasury in July, 1904, when certain matters of this kind were submitted. The practice established then was that a second fee was payable on re-entry of a case for new trial after an order for a new trial or after disagreement of a jury. That, of course, was not a statement of the practice, but it did reflect what the practice was at that time, and that was the practice which should be followed. Under those circumstances it was essential, if the parties wished the action to be tried once again, that the action should be set down and a further fee paid on setting down. There would be an order that the plaintiff be at liberty to set down the action within twenty-one days and that, failing that, the defendant would have the right to set the action down. Order accordingly.

APPEARANCES: *P. Bloomfield* (*Paisner & Co.*); *J. Wilmers* (*Canter, Hellyar & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 654**

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Argyll County Council (Loch Airidh Aon Oidhche, Arinagour) Water Order, 1955. (S.I. 1955 No. 750 (S. 92).) 5d.

Caithness County Council (Loch Shurrery) Water Order, 1955. (S.I. 1955 No. 748 (S. 90).) 5d.

Retention of Cables and Mains under Highways (East Sussex) (No. 1) Order, 1955. (S.I. 1955 No. 758.)

Retention of Pipes under Highway (Caithness) (No. 1) Order, 1955. (S.I. 1955 No. 754.)

Rope, Twine and Net Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 747.) 6d.

Staffordshire Potteries Water Board (No. 2) Order, 1955. (S.I. 1955 No. 746.)

Stewartry of Kirkcudbright (Glen Burn, New Abbey) Water Order, 1955. (S.I. 1955 No. 749 (S. 91).) 5d.

Stopping up of Highways (Cheshire) (No. 3) Order, 1955. (S.I. 1955 No. 756.)

Stopping up of Highways (Kent) (No. 8) Order, 1955. (S.I. 1955 No. 753.)

Stopping up of Highways (London) (No. 19) Order, 1955. (S.I. 1955 No. 757.)

Stopping up of Highways (Middlesbrough) (No. 1) Order, 1955. (S.I. 1955 No. 751.)

Stopping up of Highways (Sheffield) (No. 2) Order, 1955. (S.I. 1955 No. 752.)

Stopping up of Highways (Wakefield) (No. 2) Order, 1955. (S.I. 1955 No. 755.)

Taunton Corporation Water Order, 1955. (S.I. 1955 No. 741.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Service of Notices on Partnerships by Local Authorities outside London

Q. My council serve many abatement notices under s. 93 of the Public Health Act, 1936, on firms of estate agents, and after perusing the relevant sections of the Public Health Act, 1936, the Public Health (London) Act, 1936, and s. 183 of the London Government Act, 1939, it would seem to me that only a local authority in the Metropolis may serve a notice on a partnership or firm by serving such notice on the firm by its business name, and the notice is "*deemed* to be served on each partner" only when the service is in accordance with s. 183 of the London Government Act, 1939. (1) Is there any statutory provision corresponding to s. 183 of the London Government Act, 1939, regarding service of notices by local authorities outside the metropolitan area? (2) If the answer to (1) is no, can an abatement notice be served on a firm by its business name, and if so, in view of the provisions of s. 94 of the Act of 1936, which enables a complaint to be made to the justices to summon a *person* on whom an abatement notice has been served and who has defaulted in complying therewith, can the subsequent complaint to the justices be framed to summon the firm or must the name of each partner be specified in the complaint? (3) If it is necessary to serve all partners with an abatement notice, can expense and office work be curtailed by sending a notice to the firm's office but including the names of each and every partner on one notice, stating that they trade collectively under a particular style or title, or should an individual notice be made out and served on each partner in the firm?

A. (1) We do not know of any provision as to service on a partnership corresponding to that in s. 183 of the London Government Act, 1939, and applicable to notices served under the Public Health Act, 1936, s. 93, by provincial local authorities. (2) It might be argued that by the Interpretation Act, 1889, s. 19, a partnership is an unincorporated body and so a "person" on whom service can be effected, if the firm as such are "owners" who receive the rent. (We assume that the inquiry refers especially to cases where estate agents are "owners" by virtue of the definition in s. 343 because they receive the rent.) See the reference to service on a *person* as being the owner in s. 285. Reference might be made to *Davey* v. *Shawcroft* [1948] 1 All E.R. 827. Nevertheless, we would not rely on this argument. The courts appear inclined to limit the liability of a person who is merely an agent, and we doubt if they would uphold a notice addressed in the partnership name and merely served at the office. Further, we know of no authority justifying a complaint to the justices in the firm name. (3) Following our view that the court would tend to look upon such notices very strictly, we suggest that the only safe course is to serve separate notices on each partner by name.

Will—Bequest of "All Household Furniture and Chattels and Personal Effects"—Whether Apt to Pass Motor Car

Q. By his will *A* "gave and bequeathed to his wife all his household furniture and chattels and personal effects." The testator was at the date of his death the owner of a car worth about £800, and it is desired to know if the bequest mentioned above would include this car.

A. We are not able (and would not expect to be able) to find authority on the exact words. It is assumed that the car was used primarily for pleasure purposes and not for business. We take the view that the gift comprises (i) household furniture, (ii) other household chattels, (iii) personal effects. The chattels must be limited to household chattels as the word "chattels" itself *prima facie* includes all personal estate. The phrase "household effects" would pass a motor car (*Re Wavertree* [1933] Ch. 837). The word "chattel" seems to us as wide as the word "effects" in this context and, therefore, we are of the opinion that the car would pass under the gift of chattels, even though it is implied that household chattels only are to pass. See also *Re White* [1916] 1 Ch. 172. It could also be argued that the car passed under the gift of personal effects; it would pass under a gift of household effects (*Re White, supra*; Williams, Executors, 13th ed., vol. 2, p. 627), and the same rule might apply to personal effects (compare *Re Seton-Smith* [1902] 1 Ch. 717).

Company—Transfer of Property between Associated Companies—Lease Back—Stamp Duty

Q. We are concerned for *A*, Ltd., and *B*, Ltd., which are companies incorporated under the Companies Act, 1929. *A* holds more than 90 per cent. of the issued share capital of *B*, and *B* is desirous of transferring certain freehold and leasehold properties to *A*, and to obtain the exemption from stamp duties under the provisions of the Finance Act, 1930, s. 42 (as amended by the Finance Act, 1938, s. 50). (1) Upon enquiry at the Adjudication Section of the Stamp Office we are advised that a statutory declaration would be required when presenting the transfer for stamping. The transfer as drafted by us is in the form of that contained in vol. XV, p. 1143, of the Encyclopædia of Forms and Precedents, 3rd ed., and contains the appropriate recitals. The note (u) at the foot of p. 234 of vol. VI of the Encyclopædia indicates that the statutory declaration is for use where it is not desired to incorporate recitals to the same effect in the transfer. Is this note correct, and can the statutory declaration be dispensed with where there are recitals to the same effect in the transfer? (2) It is not proposed to have a formal agreement between *A* and *B* in this case, as it is thought that the matter can conveniently be dealt with by appropriate resolutions recorded in the minutes. The precedent on p. 401 of vol. XIII of the Encyclopædia of Forms and Precedents would, however, appear to refer expressly to an agreement, and also indicates that the agreement duly stamped should be lodged together with a certified copy thereof. Is this agreement necessary, and if so, would it suffice if such agreement were merely stamped with a sixpenny stamp, as is usual in the cases of contracts for the sale of land, in view of the fact that the transfer will not ultimately be stamped with the *ad valorem* stamp duty? (3) The nominal capital of *B*, Ltd., is £500 in 500 shares of £1 each, of which only £100 has been issued, and *A* holds 95 £1 shares. We presume that the fact that all the capital has not been issued does not affect the question of the exemption from stamp duty, but we shall be obliged if you will kindly confirm. (4) There is no pecuniary consideration for the transfer, the position being that upon completion of the transfer *A* will grant a lease of the premises to *B*. We understand that it is necessary to refer in the statutory declaration to the fact that there is no monetary consideration, but we wonder if it is necessary to refer to the fact that the lease will be granted back to *B*.

A. Before dealing with the specific questions asked we should like to refer to one aspect of the transaction. It seems difficult to say that it can be *bona fide* in the interests of *B* to transfer its freehold property to *A* and then take a lease of that property, thus paying a rent and assuming other obligations in respect of what was formerly its own property; the same remark almost certainly applies to the leasehold property. It appears to us, therefore, that the transaction is *ultra vires B*. If, as we presume, the properties (subject to the lease back) are of value, then a proper consideration should in our view pass from *A* to *B*; there is no reason why there should not be a monetary consideration to remain outstanding on inter-company loan account—this would not affect s. 42 relief. Dealing now with the questions asked: (1) The note referred to is not in accordance with present Inland Revenue practice. A statutory declaration is normally required, whether or not the necessary points are covered by recitals. (2) A formal agreement is not essential. If the agreement is oral, the statutory declaration will have to give full particulars. A written agreement will, if the lease back is to be for a term not exceeding thirty-five years, be stampable as an agreement for lease, the lease itself being stamped sixpence (Stamp Act, 1891, s. 75). (3) We confirm that the existence of unissued share capital of *B* makes no difference at all. (4) If the lease back is an integral term of the agreement (oral or otherwise) between *A* and *B*, it must be disclosed. The lease from *A* to *B*, or the agreement therefor, will attract *ad valorem* stamp duty.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. A. R. C. KIRTLAN, Registrar of the Shrewsbury, Market Drayton, Oswestry and Llanfyllin, Wellington and Whitchurch County Courts and District Registrar in the District Registry of the High Court of Justice in Shrewsbury, to be in addition the Registrar of Welshpool County Court as from 26th May, in succession to Mr. G. R. D. Harrison, who has resigned.

Major V. DILWYN JONES, solicitor, of Llandrindod Wells; has been appointed clerk to all the petty sessional courts in Radnorshire.

Mr. WILFRED NOTMAN, principal assistant to the clerk to the justices at Romford, Essex, has been appointed deputy clerk to the justices at Bradford in succession to Mr. Edgar Pell, who has retired after fifty-one years' service in the department. Mr. G. R. TWIGDEN has been appointed an assistant clerk in the Bradford magistrates' clerk's department.

Mr. JAMES ALFRED SMITH, Chief Registrar of the Supreme Court of Nigeria, has been appointed a Puisne Judge, Nigeria.

Personal Note

In anticipation of Enfield becoming a borough on 23rd May, solicitors practising in Enfield recently presented to the Charter Town Clerk of Enfield, Mr. C. E. C. R. Platten, the town clerk's robes and wig and an illuminated address " in appreciation of your services which have led to the recognition of our town's many virtues."

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 6th May, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JOHN FRANCIS WHEELER, of No. 7 Western Road, Hove, Sussex, and No. 1 Drayco Buildings, Lancing, Sussex, a penalty of one hundred pounds (£100) to be forfeit to Her Majesty, and that jointly and severally with three others he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 6th May, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that MAURICE FOOKS, of No. 7 Western Road, Sussex, and No. 1 Drayco Buildings, Lancing, Sussex, be suspended from practice as a solicitor for a period of six (6) months from 19th May, 1955, and that jointly and severally with three others he do pay to the applicant his costs of and incidental to the application and inquiry.

The statement of accounts of the Legal Aid Fund for 1953–54, together with the Report of the Comptroller and Auditor General thereon, has been published by H.M. Stationery Office, price 4d. net.

DEVELOPMENT PLAN

COUNTY OF LINCOLN, PARTS OF LINDSEY

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Lincoln, Parts of Lindsey. The plan, as approved, will be deposited in the County Offices, Lincoln, for inspection by the public.

OBITUARY

MR. W. H. GREEN

Mr. William Herbert Green, solicitor, of Trowbridge, the oldest practising solicitor in Wiltshire, died on 18th May, aged 92. He was admitted in 1902.

MR. A. H. JACKSON

Mr. Alfred Horswill Jackson, retired solicitor, of Consett, has died at Ramsay, Isle of Man. Admitted in 1900, he was clerk to Consett and Benfieldside Urban Councils for many years.

MR. H. A. P. MAWSON

Mr. Harry Antony Plevna Mawson, solicitor, of Carlisle, died on 21st May. He was admitted in 1900.

MR. R. S. MAY

Mr. Richard Sturdy May, solicitor, of Newark, died on 22nd May, aged 45. He was admitted in 1937.

MR. D. H. PHILLIPS

Mr. Douglas Haultain Phillips, solicitor, of Norfolk Street, Strand, London, has died at the age of 52. He was admitted in 1932.

MR. L. W. A. WHITE

Mr. Leonard William Arthur White, O.B.E., solicitor, of Nottingham, died on 21st May, aged 51. Admitted in 1924, he was vice-chairman of Nottinghamshire County Council and had been solicitor to Beeston and Stapleford Urban Council.

SOCIETIES

The general committee of the SOCIETY OF PUBLIC TEACHERS OF LAW have appointed Professor F. H. Lawson, D.C.L., Brasenose College, Oxford, to be editor of the Society's Journal, and Mr. J. C. Smith, Department of Law, University of Nottingham, to be assistant editor. The Society's Journal will in future appear twice a year. The first issue, to be published in June, will consist of articles of interest to legal education and some book reviews. The second, to appear at the end of the year, will contain the addresses at the annual meeting, the annual report and further book reviews.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme for June, 1955; 11th June, River Weekend, details from Michael Lewis, Telephone: Vigilant 8521; 14th June, Skating Party, meet at 6 p.m. outside Queen's Club, Bayswater, tube to Queensway Station; 21st June, Reel Club, at the Royal Masonic Hospital, meet 7.15, Charing Cross Underground Station.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

" Very Misleading "

Sir,—Referring to P.E.S.'s article " Very Misleading," in your issue of 21st May, no mention is made of the cheque already bearing a 2d. stamp. Surely the endorsement merely completes the document and there is no need to pay duty twice.

JOHN BESWICK.

Whitburn,
Co. Durham.

"THE SOLICITORS' JOURNAL"

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